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Civil Action
No. U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

TOMLINSON, M.J.

* All references to “columns” herein refer to the numbered columns set forth in SCHEDULE A.

5. On information and belief, defendant Bens BBQ, Inc. (“Bens”) is a corporation organized under the laws of the state of New York with a principal place of business at 70 West Main Street, Patchogue, New York 11772.

6. At all times hereinafter mentioned, Bens did, and still does, own, control, manage, operate, and maintain a place of business for public entertainment, accommodation, amusement, and refreshment known as BobbieQue, located at 70 West Main Street, in Patchogue, in the State of New York.

7. Musical compositions were and are publicly performed at BobbieQue.

8. On information and belief, defendant Eric Rifkin (“Rifkin” and, together with Bens, the “Defendants”) is an individual who resides or conducts business in Suffolk County, New York.

9. On information and belief, Rifkin is a principal and/or officer of Bens.

10. At all times hereinafter mentioned Rifkin was, and still is, responsible for the control, management, operation and maintenance of the affairs of Bens.

11. At all times hereinafter mentioned, Defendants jointly had, and still have, the right and ability to supervise and control the activities that take place at BobbieQue, including the right and ability to supervise and control the public performance of musical compositions at BobbieQue.

12. Each Defendant derives a direct financial benefit from the public performance of musical compositions at BobbieQue.

**FACTS SPECIFIC TO DEFENDANTS’ INFRINGEMENT OF
PLAINTIFFS’ COPYRIGHTED MUSICAL COMPOSITIONS**

13. The Plaintiffs are all members of the American Society of Composers, Authors, and Publishers (“ASCAP”), a membership association that represents, licenses, and protects the public performance rights of its more than 500,000 songwriter, composer, and music publisher members.

14. Each ASCAP member grants to ASCAP a non-exclusive right to license the performing rights in that member's copyrighted musical compositions. On behalf of its members, ASCAP licenses public performances of its members' musical works, collects license fees associated with those performances, and distributes royalties to its members, less ASCAP's operating expenses.

15. Since February 2007, ASCAP representatives have made more than 45 attempts to contact the Defendants, or their representatives, agents, or employees, to offer an ASCAP license for BobbiQue. ASCAP has contacted Defendants by phone, by mail, by e-mail, and in person.

16. ASCAP's various communications put Defendants on notice that unlicensed performances of ASCAP's members' musical compositions at BobbiQue constitute infringement of ASCAP's members' copyrights in their musical works.

17. Defendants have refused all of ASCAP's license offers for BobbiQue.

18. Notwithstanding the foregoing, Defendants have continued to present public performances of the copyrighted musical compositions of ASCAP members at BobbiQue, including the copyrighted works involved in this action, without permission, during the hours that BobbiQue is open to the public for business and presenting musical entertainment.

19. The original musical compositions listed in Column 3 were created and written by the persons named in Column 4.

20. The original musical compositions listed in Column 3 were registered as unpublished works on the dates stated in Column 5, and since the date of registration have been printed and published in strict conformity with Title 17 of the United States Code.

21. The Plaintiffs named in each cause of action, including their predecessors in interest, if any, complied in all respects with Title 17 of the United States Code, secured the exclusive rights and privileges in and to the copyright of each composition listed in Column 3,

and received from the Register of Copyrights a Certificate of Registration, identified as set forth in Column 6.

22. The original musical compositions listed in Column 3 are now in their renewal terms of copyright, secured by the due filing of applications for renewal of copyright in the office of the Register of Copyrights. The Register of Copyrights thereupon issued Certificates of Registration of the claims of renewal in the names of the claimants listed in Column 7. The dates and identification numbers of the respective renewal certificates are set forth in Column 8.

23. Defendants on the dates specified in Column 9, and upon information and belief, at other times prior and subsequent thereto, infringed the copyright in each composition named in Column 3 by giving public performances of the compositions at BobbieQue, for the entertainment and amusement of the patrons attending said premises, and Defendants threaten to continue such infringing performances.

24. The public performances on Defendants' premises of the Plaintiffs' copyrighted musical compositions on the dates specified in Column 9 were unauthorized: neither Defendants, nor any of the Defendants' agents, servants or employees, nor any performer, was licensed by, or otherwise received permission from any Plaintiff, or any agent, servant, or employee of any Plaintiff, to give such performances.

25. In undertaking the conduct complained of in this action, Defendants knowingly and intentionally violated Plaintiffs' rights.

26. The many unauthorized performances at BobbiQue include the performances of the five copyrighted musical compositions upon which this action is based.

27. At the times of the acts of infringement complained of, the Plaintiff named in each cause of action was the owner of the copyright in the composition therein named.

28. The said wrongful acts of the Defendants have caused and are causing great injury to the Plaintiffs, which damage cannot be accurately computed, and unless this Court

restrains the Defendants from the further commission of said acts, said Plaintiffs will suffer irreparable injury, for all of which the said Plaintiffs are without any adequate remedy at law.

WHEREFORE, Plaintiffs pray:

I. That Defendants and all persons acting under the direction, control, permission or authority of Defendants be enjoined and restrained permanently from publicly performing the aforementioned compositions or any of them and from causing or permitting the said compositions to be publicly performed at BobbieQue, or in any place owned, controlled or conducted by Defendants, and from aiding or abetting the public performance of such compositions in any such place or otherwise.

II. That Defendants be decreed to pay such statutory damages as to the Court shall appear just, as specified in 17 U.S.C. § 504(c)(1), namely, not more than Thirty Thousand Dollars (\$30,000) nor less than Seven Hundred And Fifty Dollars (\$750) in each cause of action herein.

III. That Defendants be decreed to pay the costs of this action and that a reasonable attorney's fee be allowed as part of the costs.

IV. For such other and further relief as may be just and equitable.

Dated: New York, New York
August 25, 2014

By: 

Richard H. Reimer
Jackson P. Wagener
ASCAP
1900 Broadway
New York, NY 10023
(212) 621-6000 (P)
(212) 787-1381 (F)
rreimer@ascap.com
jwagener@ascap.com

Attorneys for Plaintiffs

SCHEDULE A

Schedule A

Columns	1	2	3	4	5	6	7	8	9
Cause of Action	Plaintiff	Musical Composition	Writer(s)	Date of Registration	Certificate of Registration Number	Renewal Claimant	Renewal Certificate Date and Number	Date of Known Infringement	
1.	UNIVERSAL MUSIC CORP.	DON'T TAKE ME ALIVE	WALTER C. BECKER DONALD J. FAGEN	May 6, 1976	EU 679294 REGISTERED AS UNPUBLISHED	ABC DUNHILL MUSIC, INC.	RE 891-483 December 31, 2003	January 24, 2014	
2.	HIDEOUT RECORDS & DISTRIBUTORS, INC. (GEAR PUBLISHING DIVISION)	MAINSTREET	ROBERT C. SEGER	October 22, 1976	EU 725042 REGISTERED AS UNPUBLISHED	GEAR PUBLISHING COMPANY	RE 895-215 January 06, 2004	January 24, 2014	
3.	HIDEOUT RECORDS & DISTRIBUTORS, INC. (GEAR PUBLISHING DIVISION)	FIRE DOWN BELOW	ROBERT C. SEGER	October 22, 1976	EU 725045 REGISTERED AS UNPUBLISHED	GEAR PUBLISHING COMPANY	RE 895-218 January 06, 2004	January 25, 2014	
4.	HIDEOUT RECORDS & DISTRIBUTORS, INC. (GEAR PUBLISHING DIVISION)	ROCK AND ROLL NEVER FORGETS	ROBERT C. SEGER	October 22, 1976	EU 725047 REGISTERED AS UNPUBLISHED	GEAR PUBLISHING COMPANY	RE 895-220 January 06, 2004	January 24, 2014	
5.	ICE NINE PUBLISHING COMPANY, INC.	FRANKLIN'S TOWER	ROBERT HUNTER JEROME GARCIA WILLIAM KREUTZMANN	October 28, 1975	EU 628886 REGISTERED AS UNPUBLISHED	ICE NINE PUBLISHING COMPANY, INC.	RE 890-264 November 19, 2003	January 24, 2014	